

MOTION PRACTICE

12.01: *Filing of Motions.* All criminal and civil motions shall be filed with the Clerk of Court.

12.02: *Duty to Consult Before Filing Any Motion.* All motions filed shall contain an affirmation by the movant's counsel that prior to filing the motion he or she consulted with opposing counsel and attempted in good faith to resolve the matter contained in the motion, unless movant's counsel certifies that such consultation would serve no useful purpose or could not be timely held. Counsel is under no duty to consult with a *pro se* litigant. The following dispositive motions are excluded from this rule:

- (A) Motion to dismiss;
- (B) Motion for summary judgment;
- (C) Motion to suppress; and
- (D) Motion for new trial or judgment NOV.

Motions filed in real estate mortgage foreclosure cases are also excluded.

12.03: *Motions to Be Filed Promptly.* Attorneys are expected to file motions immediately after the issues raised thereby are ripe for adjudication.

12.04: *Supporting Memoranda.* All motions made other than in a hearing or trial or to compel discovery shall be timely filed with an accompanying supporting memorandum which shall be filed and made part of the public record. However, unless otherwise directed by the Court, a supporting memorandum may be waived if a full explanation of the motion as set forth in Local Criminal Rule 12.05 is contained within the motion and a memorandum would serve no useful purpose. Where appropriate, motions shall be accompanied by affidavits or other supporting documents.

12.05: *Form and Content of Memoranda.*

- (1) A memorandum shall contain:
 - (A) A concise summary of the nature of the case;
 - (B) A concise statement of the facts that pertain to the matter before the Court for ruling;
 - (C) The argument (brevity is expected) relating to the matter before the Court for ruling with appropriate citations;
 - (D) Copies of any unpublished decisions, out-of-state court decisions, or decisions published in the various specialized reporting services (e.g., CCH Tax Reports, Labor Reports, U.C.C. Reporting Service, etc.);

- (E) Where the supporting memorandum opposes a motion for summary judgment, a short and concise statement of the material facts shall be set forth.
- (2) Unless an exception is granted by the Court, no memorandum shall exceed:
 - (A) 35 double-spaced pages, in the case of an initial brief of any party (Rules 12.04 - 12.05); and
 - (B) 15 double-spaced pages, in the case of any reply (Criminal Rule 12.07).

The page limitation is exclusive of affidavits, supporting documentation and copies of authority required to be attached by Rule 12.05(1)(d).

12.06: *Responses to Motions.* Any memorandum of opposing counsel must be filed with the Clerk within fifteen (15) days of the filing of the motion. Counsel shall furnish a copy of any such memorandum to opposing counsel at the time of filing. If no memorandum in opposition is filed within fifteen (15) days, the Court will decide the matter on the record and such oral argument as the movant may be permitted to offer, if any.

Any motion supported by discovery material shall specify with particularity the portion of the discovery material relied upon in support of counsel's position and summarize the material in support of counsel's position.

12.07: *Replies.* Replies to responses are discouraged. However, a party desiring to reply to matters raised initially in a response to a motion or in accompanying supporting documents shall file the reply within five (5) days after service of the response, unless otherwise ordered by the Court.

12.08: *Hearings on Motions.* Hearings on motions may be ordered by the Court in its discretion. Unless so ordered, motions shall be determined without a hearing.

12.09: *Frivolous or Delaying Motions.* Where the Court finds that a motion is frivolous or filed for delay, sanctions may be imposed against the party or counsel filing such motion.

12.10: *Draft Orders Submitted By Counsel.*

- (A) *Matters to Which Applicable.* This rule is applicable to all draft orders or proposed findings and conclusions submitted by counsel.

- (B) *General Standards.* The Court may request proposed orders from counsel in compliance with the standards set forth below and by the Fourth Circuit and United States Supreme Court:¹
- (1) Whenever practicable, the Court will provide oral or written guidance in the form of a tentative ruling, outline of matters to be addressed, or ruling as to matters not to be included.
 - (2) Any tentative ruling of the Court pursuant to Local Criminal Rule 12.10(b)(I) will remain subject to modification until the final order is signed.
 - (3) Proposed orders will make reference to supporting evidence (*e.g.* by name of witness or exhibit number) where applicable.
 - (4) Copies of proposed orders will be provided to all counsel of record at the same time and in the same manner as provided to the Court; *provided, however*, that if the Court requests proposed findings and conclusions to be submitted before trial, the Court may postpone the required exchange until after trial.
 - (5) Unless otherwise ordered, opposing counsel will have ten (10) business days from receipt in which to comment on the proposed order. Comment may be provided by letter.
 - (6) Counsel are encouraged to submit orders to the court both by hard copy and in electronic form (*i.e.* on computer disk) to facilitate revision by the Court.

¹ Anderson v. City of Bessemer, 470 U.S. 564, 571-71 (1985); Aiken County v. BSP Division of Envirotech Corp., 866 F.2d 661, 676-77 (4th Cir. 1989).